

FCC MAIL SECTION

Federal Communications Commission

DA 00-553

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Ebro, Florida)

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MM Docket No. 00-43

RM-9833

NOTICE OF PROPOSED RULE MAKING**Adopted: March 1, 2000****Released: March 10, 2000****Comment Date: May 1, 2000****Reply Date: May 16, 2000**

By the Chief, Allocations Branch

1. The Commission has before it for consideration a Petition for Rule Making filed by Washington County Communications ("Washington County") requesting the allotment of Channel 236A to Ebro, Florida, as the community's first local aural service. Washington County indicated that it would file an application for Channel 236A at Ebro if the channel is allotted to the community.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). Here, we find that Ebro is an incorporated community in Washington County with its own zip code and post office and that the U.S. Census credits Ebro with a population of 255 people. In support of its proposal, Washington County states that the community's major employer is the Ebro Greyhound Park, employing approximately 175 people, and is open from January 15 through October 28. According to Washington County, Ebro has its own form of local government comprised of a city council, elected mayor and a city clerk. Ebro's businesses include a grocery store, motel, restaurant, tire and oil store, taxidermist, tackle and bait shop and a recreation park called "Obie Morrell Roe". Washington County also states that Ebro has three churches, a community center, library, and its own fire department. Although Washington County has indicated that there are some businesses and churches in Ebro, it has not identified those

entities with addresses or shown that they are intended to serve residents of Ebro as opposed to other areas. Therefore, Washington County is requested to present the Commission with specific information to demonstrate that Ebro has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. Ebro should show that the organizations, civic groups, churches, schools, police, etc., have a nexus with Ebro. See Gretna, Marianna, Quincy and Tallahassee, FL, 6 FCC Rcd 633 (1991).

3. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Ebro if it is determined that Ebro is a community for allotment purposes. A staff engineering analysis indicates that Channel 236A can be allotted to Ebro consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction 3.3 kilometers (2.0 miles) northwest of the community.¹ The site restriction will prevent a conflict with Station WPPT, Channel 233C, Parker, Florida.

4. In view of the fact that the proposed allotment could provide a first local service to Ebro, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 236A to Ebro, Florida. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Ebro, Florida.

Community	Channel No.	
	Present	Proposed
Ebro, Florida	-----	236A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before May 1, 2000, and reply comments on or before May 16, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Bruce A. Eisen
Kaye, Scholer, Fierman, Hays & Handler, LLP
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Washington, D. C. 20005

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory

¹ The coordinates for Channel 236A at Ebro are 30-28-15 and 85-53-45.

Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's

Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, SW, Washington, D. C. 20554.